

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.46 of 2021**

Arising Out of PS. Case No.-279 Year-2018 Thana- TRIVENIGANJ District- Supaul

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ARJUN YADAV S/O UTTIM LAL YADAV @ UTTIM LAL YADAV
Resident Of Village - karharwa, Ward No.10, P. S. -Truveniganj, District-
Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Md.Imteyaz Ahmad, Advocate Mr. Ritwaj Raman, Advocate Ms. Vaishnavi Singh, Advocate Mr. Udhbav, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 12-01-2023

Heard Mr. Ajay Kumar Thakur, learned counsel
for the appellant and Ms. Shashi Bala Verma, learned
Additonal Public Prosecutor for the State.

2. By the impugned judgment and order dated
16.03.2020/30.06.2020 passed by learned Additional District
and Sessions Judge-1 cum Special Judge, Supaul, in POCSO
Case No. 47 of 2018, arising out of Triveniganj P.S. Case No.
279 of 2018, the appellant has been convicted and sentenced as
under:



Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
302/201 of the IPC	Imprisonment for life	50,000/-	-
376 of the IPC	Imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life	50,000/-	-
364 of the IPC	R.I. for ten year	50,000/-	-
4 of the POCSO Act	No separate sentence has been awarded under these Sections	-	-
6 of the POCSO Act		-	-

3. A written report of the victim's mother dated 19.07.2018 addressed to the officer in-charge, Triveniganj Police Station in the District Supaul is the basis for registration of the Triveniganj P.S. Case No. 279 of 2018 on 19.07.2018 at 1:00 pm, leveling commission of the offences punishable under Sections 363, 364 read with Section 120B and Section 201 of the Indian Penal Code. She alleged in her written report that her daughter (the victim, whose name has been concealed in the present judgment) had gone for taking a hair cut at 6:00 pm in the shop of Bandul Thakur (PW-4). On her way back home she met the appellant who, upon some allurements took her to his shop (appellant's shop). Since then the victim was missing. In a CCTV footage, the appellant was distinctly seen



taking away the victim. She accordingly suspected that the appellant might have kidnapped the victim and killed her and concealed her dead body for disappearance of the evidence. She further alleged that many co-villagers had seen the victim (a minor) with the appellant. The appellant was named in the FIR. From the lower court records as well as evidence of PW-13 (the Investigating Officer), it appears that the appellant was arrested by the police on 19.07.2018 itself by the police.

4. On 20.07.2018 at 8:30 am, the appellant is said to have made his confessional statement before the police wherein he confessed that after alluring the victim when she was returning back to his her house from the barber's shop, he (the appellant) had taken her to his shop and had sexually assaulted her. As she had started crying, he had forcefully pressed her mouth and nose because of which she died. Thereafter, when the activities in the market subsided, he lifted the body of the victim on his shoulder to dispose it off in a bamboo orchard. On his way he met Anil Kumar Yadav (PW-1), who was found easing himself in an open field space. On being questioned by him(PW-1) as to what the appellant was doing, he dropped the dead body on the ground and told PW-1 that it was the dead body of his (the appellant) daughter whom he had killed as she had quarreled with him. The appellant



took an assurance from him (PW-1) that he would not disclose this fact to anyone. He is also said to have disclosed to the Investigating Officer in his confessional statement that after he was arrested on 19.07.2018, he was assaulted by an agitated mob. After confessing his guilt he is said to have told the police that the dead body could be recovered from the place where the same was disposed by him. The appellant's signature was obtained on his confessional statement, said to have been made by him before the police during the course of investigation. The dead body of the deceased was recovered on 20.07.2018 at 9:30 pm, which according to the Investigating Officer was completely nude (*nang-dharang*). An inquest report was prepared and the dead body of the deceased was sent for *postmortem* examination at Sadar Hospital Supaul. From the *postmortem* report (Exhibit-2), it appears that the Doctor found the time elapsed since death of the victim was more than seventy two hours. The *postmortem* examination had commenced at 3:20 pm on 20.07.2018. The cause of death was found to be cardio-respiratory failure due to asphyxia caused by throttling.

5. The police, upon completion of investigation submitted its charge-sheet whereupon cognizance was taken. Subsequently, charges were framed against the appellant for



commission of the offences under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act) and Sections 364, 376, 302 and 201 of the Indian Penal Code. The appellant pleaded innocence and claimed to be tried.

6. At the trial altogether 14 prosecution's witnesses came to be examined including the Doctors [Mahendra Yadav (PW-10) and Dr. Chandan Kumar (PW-8)], who had conducted the post mortem examination. The Investigating Officer came to be examined as PW-13. It is noteworthy that the clippings of the CCTV footage showing presence of the appellant near the victim was stored in a pen drive according to the case of the prosecution, which was kept in a sealed box which was exhibited as Exhibit-8 at the trial, and was produced before the trial court by in-charge of Malkhana of the Police Station (PW-14).

7. Before noticing the submissions advanced on behalf of the appellant and learned Additional Public Prosecutor, it has been considered apt to notice first the evidence of the prosecution's witnesses.

8. The PW-1 (Anil Kumar Yadav) is a crucial witness, as according to the prosecution he had seen the appellant dropping the dead body of a child when he had gone



to ease himself. According to him, it was at 9:00 pm, when he had gone to attend the nature's call in the orchard near the *Haat*. In his examination-in-chief, he deposed that the appellant came near him carrying the dead body on his shoulder and threw it off his shoulder. On asking, the appellant told PW-1 that it was the dead body of his (the appellant's) daughter whom he had killed because she had quarreled with him. He, however, could not identify the victim because of the darkness. He did not ease himself thereafter and returned back his home and narrated the entire story to his wife. In the morning he learnt that the daughter (minor aged about 6 years) of Gajendra Yadav (not examined, i.e. husband of the informant) was missing. He identified the appellant in the dock. In his cross-examination, he deposed that he had himself gone to the police for recording of his evidence and that the police were not knowing from before about the fact that he had gone to attend the nature's call in the night of the occurrence when he had seen the appellant as he mentioned in his examination-in-chief and that he had not disclosed this fact to anyone except his wife. He further deposed that on the date of occurrence itself he had heard an announcement made from the loudspeaker of a mosque that the daughter of Gajendra Yadav was missing. He also deposed in paragraph-10 that he had met Gajendra Yadav at his residence



on 18.07.2018 before lodging of the case with the police. In paragraph-8 of the cross-examination, he deposed that while returning from the place of occurrence (i.e. the place where he had gone to defecate) in the said night, he had disclosed about the occurrence to Tarun Yadav (PW-2) and Lal Yadav (not examined). He also deposed that there was only one sando on the dead body which the appellant was carrying. He further deposed that on the date of occurrence father of the victim Gajendra Yadav was not present in his house and he returned home four days thereafter. He was knowing about the disappearance of his daughter, whereupon, Gajendra Yadav had lodged the case. PW-1 reiterated that he had told Gajendra Yadav that he had seen the appellant throwing the dead body of a child in the bamboo orchard. He also disclosed that Gajendra Yadav had told him (PW-1) that he had given his name as a witness in the case.

9. Tarun Yadav, PW-2 in his deposition stated that he had seen the victim going towards the east and the appellant coming from the west. The victim had enquired from the appellant whether he had seen her grandmother, whereupon, the appellant had told her that her grandmother was there in his (appellant's) shop, whereupon, the victim had accompanied the appellant to his shop. PW-2 in his evidence claimed that he had listened the conversation between the appellant and the victim.



At about 8:00-9:00 pm the news circulated that Gajendra Yadav's daughter was missing. After a search made by her parents, the victim's dead body was recovered in the north of 'Maveshi Haat' in the bamboo shoots.

10. The informant (PW-3) deposed that when the victim was heading towards a sweet-shop after having taken hair cut, Arjun Yadav (the appellant) had taken her to his shop on the pretext of the presence of the grandmother of the victim in his shop. In the shop he strangled her. There were teeth's impression all over the body of the victim, her pants were removed and she was bleeding. The dead body was recovered three days after in the bamboo shoots. In the CCTV footage shown to her she had seen the appellant taking the victim along. She also deposed that she lodged the case after the dead body was recovered. There was a CCTV camera installed at the *Hatia* from which she learnt that the deceased was seen accompanying appellant. During the course of her cross-examination, she deposed that she had seen the dead body of the deceased three days after she (the victim) had gone to take her hair cut. She had seen the CCTV footage, captured in the camera of one Jai Shankar @ Lal Yadav whose shop was adjacent to the shop of the appellant. She could not mention, however, the time of the CCTV footage. She had simply seen people going and coming in



the CCTV footage. There were a lot of people around the place where the appellant was standing. She identified some of the persons present around the appellant. One shopkeeper had told her that he had seen the victim going with the appellant but she did not disclose the name of the shopkeeper nor the said shopkeeper was examined by the police. She could not decipher the conversation between her daughter and the accused from the CCTV footage as there was no audio. The appellant was seen signaling the victim. She had enquired from her mother-in-law as to where had she had left the victim behind, upon which she (mother-in-law) had informed that she was in the *Hatia* thereafter, she searched her all over the *Hatia* but could not find her. She went to the shop of the appellant, who was not present. On seeing the appellant and the victim going with other persons, she had suspected that the appellant might have committed the crime and accordingly on the basis of suspicion she had got registered the FIR.

11. The PW-4 is the barber to whose shop the victim had gone for haircutting with her grandmother. He deposed that the victim had gone with her grandmother after the hair cut. In the meanwhile he got engaged in someone else's haircutting. Three days thereafter he learnt that the dead body of the victim was recovered. This witness supported at the trial the



only fact that the victim was brought to his shop by her grandmother for haircutting nearly 8-9 months ago. It is noted at this juncture itself that PW-4 has not given any specific date when the victim had come to his shop.

12. The PW-5, (Lal Yadav) too deposed that sixteen CCTV cameras are installed in the *Haat* in which the victim was seen going with the appellant. The CCTV footage was seen by many persons who had come there to see that. During his cross-examination, he deposed that the control unit of the CCTV camera was installed in his house and the footage of the CCTV camera was of 7:00 pm. So many persons were seen coming and going in the said footage. It could not be said as to who was moving with whom in the said CCTV footage. There are two *Hatias*, both of which are looked after by him. The tailoring shop of the appellant is located in “Mukhiya ji ka Haat”. There is no CCTV camera installed in “Mukhiya ji ka Haat”. The appellant was seen moving ahead, followed by the victim. The distance between them was two-four arm’s length. The appellant and the victim were seen moving thus, for nearly 40 feet. There was no announcement in the *Hatia* that the victim had gone missing from the *Hatia*. An announcement was being made from the loudspeaker of the Mosque that the victim had gone missing. In view of the said announcement on the loudspeaker he had started



watching the CCTV footage.

13. Another important witness in this case is PW-6, the grandmother of the victim with whom she had gone to the barber's shop for haircutting. She deposed that she had gone to the barber's shop at Kumiya Haat at 6:00 pm and had asked the victim to stay there after the haircut until she returned back after purchasing *chura* (flattened rice). On her return, when she enquired from the barber Bandul Thakur (PW-4) about the victim, he told her that she had gone toward the *Haat* after searching for a while she returned home and enquired from the informant as to whether the victim had returned or not. As the informant answered in negative, they started searching for the victim. They went to the house of Tarun Yadav (PW-2). Tarun Yadav is said to have told her that while purchasing vegetables he had seen the appellant taking the victim to some place. Thereafter, they reached the appellant's shop when they found the shop closed. Then they went to the house of the appellant and enquired from his father as to where the appellant had kept the victim. The appellant's father disclosed them that the appellant had not come to the house. She witnessed in the CCTV footage that the victim was seen following the appellant and the victim was calling her by signals. Subsequently, she learnt that the appellant, after having ravished victim, had killed her. The dead



body of the victim was subsequently recovered from the bush near a cotton tree. The appellant had disclosed to the police about the place where the dead body was lying.

14. Dr. Mihir Kumar Verma (PW-7) under whose observation the autopsy was performed at Sadar Hospital, Supaul testified that the age of the victim was found to be six years. The *postmortem* was conducted by Dr. Chandan Kumar (PW-8). The test of vaginal swab was done under his observation by Dr, Chandan Kumar (PW-8). The contents of the *postmortem* report came to be proved by him at the trial as Exhibit-2, which read as under:

“Antemortem finding.

External finding:-

- Rigor Mortis absent in all limb.
- Magoots present all over the body.
- Eye bulging, tongue protruded.
- Teeth bite mark on the chest.
- Hymen ruptured and distorted.
- (vaginal swab present)

Internal finding:

-see column No. 7 to 28.

Cause of death:- CR failure due to asphyxia caused by throttling.

Time elapsed since death, more than 72 hrs.

vaginal swab report shows tissue dibrises, hyaline casts and few epithelial cell (distorted) present.”



15. In his cross-examination in response to a query made on behalf of the defence he deposed that whatever was found in the vaginal cavity is normally found in everyone.

16. PW-8, Chandan Kumar also proved his signature over the *postmortem* report and the *antemortem* injuries found upon during the course of *postmortem* examination. Based on the said *postmortem* report, he deposed that the time elapsed since the death was more than 72 hours. In his cross-examination, he clearly deposed, based on the findings in *postmortem* report that the time elapsed since the death of the deceased was found to be more than 72 hours at the time of the *postmortem* examination. His evidence in paragraph-4 of his cross-examination is one of the most crucial aspects which is of immense significance, is being reproduced hereinbelow:

04. मेरे पोस्टमार्टम रिपोर्ट के अनुसार मृतिका की मृत्यु 72 घंटे से अधिक की दर्शायी गयी। मैंने पोस्टमार्टम 20.07.2018 को 03:20 पी0एम0 में किया। इस आधार पर मृतिका की मृत्यु 17.07.2018 के दिन के 03:20 मिनट के पूर्व का होने का प्रमाण मिलता है। पोस्टमार्टम रिपोर्ट के अनुसार मृतिका की मृत्यु 24 से 48 घंटे के बीच की नहीं होगी। मृतिका के छाती पर दांत काटने का निशान पाया था। छाती पर लालपन पाया उसी आधार पर मैंने उसे दांत काटने का निशान माना। अगर दांत काटने का निशान होगा तो वह सरकुलर जख्म के रूप में आएगा।



मेरे पोस्टमार्टम रिपोर्ट में किस स्वरूप में वह लालपन था, नहीं लिखा गया है।

17. It is, thus, evident from the testimony of the Doctor who had conducted the *postmortem* report that according to his calculation based on the findings recorded in the *postmortem* report the death of the victim had occurred on 17.07.2018 before 3:30 am. He further testified that according to the *postmortem* report, the death of the victim could not have occurred between 24 to 48 hours before the *postmortem* examination was conducted. As regards, the finding in the *postmortem* report of presence of teeth bite mark on the chest of the victim, he deposed that having noticed redness over the chest of the deceased he had mentioned the same to be mark of teeth bite. He further clarified that in case of a teeth bites circular wounds are formed. No mark of strangulation was present on the neck of the deceased. Further, it was not always necessary that such mark of throttling would be there because the time of death was beyond 72 hours.

18. PW-9, another member of the medical board also proved the contents of the *postmortem* report, who was the supervisor of the *postmortem* examination. He proved his signature on the *postmortem* report which came to be exhibited



at the trial.

19. PW-10, is a uncle of the deceased, who is a hearsay witness. In his deposition, he too did not specify the exact date of occurrence by deposing that the occurrence had taken place 'a year ago'. In his examination-in-chief, he deposed that after he was informed by his mother (apparently the grandmother of the deceased) (PW-6) about missing of the deceased, he and other had started searching for her at the *Hatia*. He had met Tarun Yadav (PW-2), who had told that the deceased was found going with this appellant. Thereafter, he managed an announcement made about the missing of the victim through the loudspeaker at the mosque. He proved the inquest report, which bore his signature.

20. PW-11, is another uncle of the deceased. He deposed that the dead body was nude. He proved his signature on the inquest report. He deposed that he was resident of Village Latauna whereas the victim was resident of Karharwa. The distance between the two villages is about eight kilometers. The dead body of the deceased was recovered from Karharwa village. He had reached the place where the dead body was recovered at 9:00 am. Before he reached there, there were nearly 400 persons already present. At about 9:45 am the police had taken the dead body to the Police Station. He had



accompanied the police and the dead body to the Police Station and subsequently to the Sadar Hospital for *postmortem* examination.

21. PW-12, is brother of the victim. He deposed that at around 4:30 pm, the victim had gone with her grandmother (PW-6) at the barber's shop. PW-6, after leaving the victim at the barber's shop had gone to purchase *chura*. PW-6, thereafter returned back to the house. As the victim was not in the house they started searching for her. During the course of search, based on CCTV footage taken from CCTV cameras installed at Kumayhai Haat it was found that the appellant was taking the victim along with him. Subsequently, the administration was informed about the occurrence. The victim's dead body was found in a bush. The deceased was found wearing a sando only when her dead body was recovered. He also deposed that he noticed in the camera that whenever the victim stopped following the appellant, the appellant would signal her to come with him. According to him, during his cross-examination, he deposed that it was a twenty minute CCTV footage in which so many persons including the deceased were seen. He noticed that the appellant remained two steps ahead of the victim. In the said CCTV footage he noticed the appellant signaling the victim to come



to him, four-five times. He also deposed that he had not seen anyone holding the victim. In the CCTV he had seen the victim going up to Kumayhai Maveshi Haat. In paragraph-9 of his cross-examination PW-12 deposed that the dead body of the victim was discovered two days after occurrence. First time someone else had seen the dead body. The dead body of the deceased was searched by 'him only' (emphasis added) with other persons. Jai Shankar Kumar (PW-4), Babloo (not examined), Anil Yadav (PW-1), Ajay Yadav (not examined) and other 10-15 persons had assisted him in searching the dead body of the deceased. This evidence of PW-12 in paragraph-9 of the cross-examination has significance in view of the case of the prosecution that the dead body of the victim was recovered by the police based on the confessional statement made by the appellant to the police in custody, in the course of investigation.

22. PW-13, Rajesh Singh, the Investigating Officer, described the date of occurrence as 18.07.2018. According to him, he received an information on mobile at 8:20 am to the effect that the victim was apprehended on the preceding evening i.e. 18.07.2018. After having recorded a *sanha* entry he proceeded for verification and reached the informant's house at Kumiyaahi village and obtained her



written report. He thereafter, watched the CCTV footage in the house of Jaishankar Yadav @ Lal Yadav (PW-4) in which he found the appellant taking the victim along with him. On the same day at 1:45 pm, he reached village Karharwa and recorded further statement of the informant. Other witnesses, including Mosmat Kasmoin Devi (PW-6), Bandul Thakur (PW-4), Tarun Yadav (PW-2) Jaishankar Kumar (PW-5) and Anil Yadav (PW-1) were also examined by him on the said date. According to him, the first place of occurrence was at Kumiyahi Haat where the victim had gone for haircutting. The victim was found to have been seen with the appellant near Md. Salim's vegetables shop. On the pretext that the appellant would take the victim to her grandmother, the appellant took the victim to Maveshi Haat, from where the victim was missing. At 3:45 pm the appellant was apprehended by the Investigating Officer. He deposed that the appellant was assaulted by the crowd which was agitated against his misdeeds. The police, however, managed to take him safely to the Police Station. The appellant did not disclose anything to the police on that day i.e. 19.07.2018. On 20.07.2018 at 8:30 am, the appellant confessed before the police that on Wednesday at around 7:00 pm when he was roaming in the Hatia of Lal Yadav @ Jaishankar Kumar situated at Kumiyahi,



the victim met him, who was wearing a sando and a pair of pants and had asked about the whereabouts of her grandmother. The appellant told the victim that her grandmother was in his shop and assured her to take her to her grandmother. Thereafter, victim followed the appellant to his shop. In the shop, he ravished her after shutting the gate of his shop. When she had started crying, he had pressed her mouth and nose because of which she died. As has been noted in the foregoing paragraphs, he further deposed that when the *Hatia* turned deserted late in the evening, he carried the dead body on his shoulders and proceeded to dispose off the dead body of the deceased. In the meanwhile, Anil Yadav (PW-1) met, whereafter, he dropped the dead body and beseeched Anil Yadav (PW-1) not to disclose to anyone the fact about the killing of his own daughter. He had told Anil Yadav (PW-1) that the dead body was of his own daughter whom he had killed. Thereafter, he again lifted the dead body and threw it in the bush near bamboo plants situated northeastern side of the house of one Bacchu Chaudhary (not examined). Thereafter, when he was returning back to his house on 19.07.2018, he was arrested by the police at 4:00 pm. PW-13, the Investigating Officer after having recorded the confessional statement of the appellant obtained his signature on the



confessional statement. He further deposed that at 9:00 am on 20.07.2018, he proceeded from the Police Station to recover the dead body of the deceased. At 9:30 am the Investigating Officer reached the place, based on disclosure made by the appellant in his confessional statement, and found the dead body of a female child lying northeastern side of Kumiya Haat near the house of Bacchu Chaudhary. After seeing the police several persons gathered near the place from where the dead body of the deceased was recovered. The inquest report was prepared on which Dr. Mihir Kumar Verma (PW-7) and Ravindra Kumar (PW-11) put their signatures. The second place of occurrence i.e. the place from where the dead body of the deceased was recovered as described by PW-13 (the Investigating Officer) was bounded from four sides as under:

North: agricultural field of Kameshwar Yadav having Patua crops.

South: house and paddy field of Gudar Chaudhary.

East: house of Bacchu Chaudhary.

West: paddy field of Gajendra Yadav.
(father of the victim).

23. It is to be noted that Gajendra Yadav is father of the deceased girl. During the course of examination, the Investigating Officer (PW-13) could not state when he had



seen CCTV footage and the actual time/period of the CCTV footage. Like other people, the appellant was seen walking in front of the victim at a distance of around 3 to 3½ feet. He did not notice any conversation between the victim and the appellant in the CCTV footage. He also deposed that, it appeared that some acid like substance or some harmful chemical was poured over the body of the deceased. When his attention was drawn to the medical evidence to the effect that the time elapsed since the death of the deceased at the time of *postmortem* examination was found to be 72 hours, the Investigating Officer responded that he did not investigate on the point of time as mentioned in the *postmortem* report. Further he also deposed that he did not find any evidence of commission of rape in the tailoring shop of the appellant. Further, though, he had seen mark of blood on the private parts of the deceased but at the place of occurrence of rape i.e. the tailoring shop of the appellant, no mark of blood, acid or any harmful chemical substance was found. The Investigating Officer was cross-examined on the point of the injuries sustained by the appellant when he was in custody. He deposed that an injury report was prepared by him of the appellant after he had recorded his confessional statement on 20.07.2018. It is evident according to PW-13, the appellant was examined by



medical officer at 10:40 pm on 20.07.2018 who made an injury report, on the back of the injury report prepared by PW13. He further deposed that when the appellant was put in the police lockup on 19.07.2018 he had not complained of any injury, and therefore, he had not prepared any injury report on 19.07.2018. On the next day, as he had complained of body ache, he had prepared the injury report. He also deposed that he had obtained CCTV footage, which he had kept in the Malkhana of the Police Station. He did not remember whether the box containing the pen drive was sealed or not. He admitted that he could not say, based on the case diary, as to whether the pen drive was preserved on the date of his deposition. The Investigating Officer (PW-13) was examined on 30.08.2019 and cross-examined on 05.09.2019.

24. PW-14, produced a sealed box, in which the pen drive was kept. He testified that the said box was handed over to him by the then officer-in-charge and the Investigating Officer of the case i.e PW-13. The box came to be marked as Exhibit-7 and the pen drive as Exhibit-8. On the sealed box as well as the pen drive the description of the case i.e. Triveniganj P.S. Case No. 279 of 2018 was mentioned bearing the signature of the Investigating Officer. It transpires from the evidence of PW-14 that with the use of a laptop in the Court



room, three printouts were taken from the CCTV footage, which came to be marked as Exhibits- 9, 9/1, 9/2. It would be apt to notice that the pen-drive did not bear MR No. (Malkhana Register Number) though 'MR No.' without any further entry was noted thereon. The PW-14 admitted in his cross-examination the practice of putting 'MR No.' on the material evidence kept in Malkhana and that the same was not done in case of the said Exhibit-7, Exhibit-8.

25. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant has submitted at the very outset that based on the evidence adduced at the trial the prosecution has failed to discharge its fundamental duty by cogent evidence to establish this appellant's connection with the offence alleged and, therefore, Section 29 of the POCSO Act, which shifts burden on the person accused of commission of offence punishable under various Sections of the POCSO Act to establish his innocence, is not attracted. He has contended that the appellant was not put to any medical examination, though, he was arrested based on mere suspicion on the very next date of registration of the FIR. He has further submitted that the finding of conviction recorded by the trial court is based mainly on the so called confessional statement of the appellant made before the police said to have led to



recovery of the dead body of the deceased, and the CCTV footage as stored in a pen drive exhibited at the trial as Exhibit-9. He would contend that the said CCTV footage is an electronic evidence which has not at all been proved in accordance with the requirement of Section 65B of the Indian Evidence Act. He has further submitted that some of the prosecution's witnesses at the trial have attempted to prove the presence of this appellant in the Haat near the victim based on what they had seen in the CCTV footage, screened in the house of Jai Shankar Kumar @ Lal Yadav (PW-4). In any view of the matter, there is no evidence to the effect that the appellant was seen holding the victim, rather they claimed to have seen in the CCTV footage that there were so many persons in the Haat and the victim was found moving behind the appellant. He has also submitted that there being material contradictions in the evidence of witnesses, particularly, PW-1 who claimed to have seen the appellant throwing the dead body of a child, the informant (PW-3), grandmother of the victim (PW-6) and brother of the victim (PW-12) they do not appear to be reliable and not creditworthy. He has further submitted that the evidence of the doctors read with the *postmortem* report totally demolish prosecution's case, which conclusively indicate that time elapsed since the death of the



deceased was more than 72 hours from the time when the *postmortem* was done i.e. on 20.07.2018. He has further argued that the evidence on record go to suggest that the dead body of the deceased was already discovered by PW-12, the brother of the victim and his aides and the recovery of the dead body of the deceased cannot be said to be a discovery of a fact based on the confessional statement said to have been made by this appellant before the police while in custody. The confessional statement said to have been made by appellant before the police is, thus, inadmissible under Section 27 of the Indian Evidence Act, he contends. He has further submitted that it emerges from the evidence of the Investigating Officer himself that whereas the appellant had not sustained any injury before he was put in the lockup, he was found to have sustained injury on the next date, after his confessional statement was recorded, which goes to suggest that the appellant was physically tortured by the police while in custody.

26. A summary of his submission is that CCTV footage and the contents of the pen drive cannot be said to have been proved, the same being in the nature of electronic evidence, without following the procedure prescribed under Section 65B of the Indian Evidence Act. Secondly, the



confessional statement said to have been made by the appellant before the police is not admissible under Section 27 of the Indian Evidence Act as the recovery of the dead body of the victim cannot be said to be a discovery of fact based on disclosure made by the appellant in his confessional statement; rather on a search made by the victim's brother and others the dead body was already recovered. Thirdly, the witnesses are not trustworthy and there are material contradictions in their depositions on various counts. Fourthly, as the prosecution has failed to discharge its primary onus to connect the appellant with the charge of penetrative sexual assault against him based on cogent evidence, Section 29 of the POCSO Act shall have not application.

27. Learned Additional Public Prosecutor representing the State has argued that there are chain of circumstances which conclusively indicate towards the appellant's culpability in commission of the offence. She submits that PW-1 had seen the appellant dropping dead body of a female child and subsequently disposing it off in a bush when he was about to ease himself, in the night of 18.07.2018. The dead body of the victim was subsequently recovered, she contends from the same place as described by PW-1, by the police subsequently based on the confessional statement of the



appellant. She has further submitted that the depositions of the witnesses at the trial disclosed the circumstance in which the appellant had taken the victim along with him on giving her false assurance and thereafter committed a heinous crime which is unpardonable. She has submitted that PW-2 in his deposition has clearly mentioned about the conversation between the appellant and the victim. She has submitted that minor contradictions in the evidence of the witnesses are immaterial for determining the culpability of this appellant and if a holistic view of the entire evidence is taken in account it can be easily deduced that the appellant has rightly been convicted by the trial court and appropriately sentenced. The trial court's finding, she contends, does not require any interference by this Court.

28. We have perused the impugned judgment and order of the trial court as well as lower court records and we have given our anxious consideration to the rival submissions made on behalf of the appellant and learned Additional Public Prosecutor for the State.

29. Since, the prosecution's case is mainly based on the confessional statement said to have been made by the appellant before the police during the course of investigation when he was in police custody, leading to the recovery of the



dead body of the deceased, according to the prosecution, we consider it apt to deal with the said aspect first. It is noteworthy that the appellant was arrested by the police on suspicion on 19.07.2018 at about 03:45 pm. He is said to have given his confessional statement at 8:30 am on 20.07.2018 disclosing, *interalia*, that while committing rape upon the victim, as the victim had cried, he had tightly pressed her nose and mouth with his hand because of which she died. He also said to have confessed before the police that PW-1 had seen him throwing the dead body of the deceased when he was going to dispose it off for its disappearance. The police party is said to have left the Police Station at 9:00 am in the morning and reached the place, said to have been disclosed by the appellant where the dead body was lying at 9:30 am. The Investigating Officer (PW-13) in his evidence deposed that after the dead body was recovered by the police large number of people had gathered there. The deposition of the brother of the victim (PW-12) on the point of recovery of the dead body of the deceased is materially different from the evidence of the Investigating Officer (PW-13). He deposed that, for the first time, the dead body of the deceased was seen by someone else, in course search made by him and others including Jai Shankar Kumar @ Lal Yadav(PW-4). From the evidence of PW-12, it



cannot be inferred that the dead body of the victims was recovered by the police on the basis of confessional statement of the appellant rather according to him the dead body was discovered by PW-12 and others who were engaged in the search of the victim after her disappearance. PW-12, in his evidence has not stated that the dead body of the deceased was recovered by the police. The evidence of PW-12, thus, goes contrary to the evidence of the Investigating Officer (PW-13) that the dead body of the deceased was recovered based on the disclosure made by this appellant to the police in his confessional statement. Evidence of PW-11 is also crucial on the point of time of recovery of the dead body of the victim. In paragraph-8 he deposed, at the trial, that he had reached the place where the dead body was found lying at 9:00 am and before his arrival at the said place there were 400 persons already present including PW-4. It is the evidence of the Investigating Officer, on the other hand, that for recovery of the dead body of the deceased he had proceeded from the Police Station at 9:00 am on 20.07.2018. The distance from the Police Station to the place of occurrence is nearly ten kilometers, as can be seen from the First Information Report. On careful reading of the evidence of the prosecutions' witnesses 11 and 12 as well as the Investigating Officer (PW-



13), it becomes doubtful as to whether the dead body of the deceased was recovered based on the disclosure made by the appellant in his confessional statement before the police. At the cost of repetition it is noted that the evidence of PW-11 and PW-12 suggest that the dead body of the victim was discovered before the arrival of the police on the said place where the dead body was lying. Accordingly, in our opinion, it is unsafe to hold conclusively that the dead body of the victim was recovered by the police based on a voluntary confessional statement made by the appellant to the police while in the custody.

30. This takes us to examine other materials/circumstances in the nature of evidence on record to test the legality of the impugned finding of conviction recorded by the trial court. As has been noticed above, the Malkhana in-charge (PW-14) proved a pen drive (Exhibit-9) and the box (Exhibit-8) in which the said pen drive was sealed and kept in Malkhana. Few printouts were taken from the said pen drive using laptop available in the Court. The computer from which the contents were extracted in the pen drive was not exhibited at the trial.

31. Section 3 of the Indian Evidence Act, defines evidence to mean and include as under:-



“1. all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry. Such statements are called oral evidence.

(ii) all documents including electronic records produced for the inspection of the Court such documents are called documentary evidence.”

32. Visibly, in view of definition of the evidence under the Indian Evidence Act that electronic records are treated as documents which are admissible only when it satisfies the requirement of its admissibility as stipulated under Section 65B of the Indian Evidence Act. Section 65B of the Indian Evidence Act, read as under:

65-B. Admissibility of electronic records.—(1) *Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

(2) *The conditions referred to in sub-*



section (1) in respect of a computer output shall be the following, namely—

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*
- (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;*
- (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and*
- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.*

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—



- (a) by a combination of computers operating over that period; or*
- (b) by different computers operating in succession over that period; or*
- (c) by different combinations of computers operating in succession over that period; or*
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,*

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;*
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;*
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,*

and purporting to be signed by a person occupying a responsible official position



in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;*
- (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;*
- (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.*

33. The term “Electronic record” finds its definition under Section 2(1)(t) of the Indian Evidence Act, to mean data, records or data generated, image or sound stored,



received or sent in an electronic form or micro film or computer generated micro fiche. Data finds its definition under Section 2(1)(o) of the Indian Evidence Act to mean representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network and may be in any form including computer printouts magnetic or optical stored medias, punched cards, punched tapes or stored internally in the memory of the computer. The question whether the contents of the memory card/pen drive can be treated to be a document or not, though for the purposes of Section 207 read with Section 173 of the Cr.P.C., had fallen for consideration before the Supreme Court in case of ***P. Gopalkrishnan v. State of Kerala*** reported in ***(2020) 9 SCC 161*** wherein the Court has concluded in paragraph-26 of the said decision read as under:

26. It can be safely deduced from the aforementioned expositions that the basis of classifying article as a "document" depends upon the information which is inscribed and not on where it is inscribed. It may be useful to advert to the exposition of this Court holding that tape records of speeches [Tukaram S. Dighole v. Manikrao Shivaji



Kokate, (2010) 4 SCC 329 : (2010) 2 SCC (Civ) 112 : (2010) 2 SCC (Cri) 826] and audio/video cassettes [Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra, (1976) 2 SCC 17] including compact disc [Shamsher Singh Verma v. State of Haryana, (2016) 15 SCC 485 : (2016) 4 SCC (Cri) 683] were "documents" under Section 3 of the 1872 Act, which stand on no different footing than photographs and are held admissible in evidence. It is by now well established that the electronic record produced for the inspection of the court is documentary evidence under Section 3 of the 1872 Act

34. Evidently, the prosecution intended to prove not the pen-drive rather the contents of the pen drive which were obtained from a computer system. Sub-section 1 of Section 65B of the Indian Evidence Act lays down, Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document, if the conditions mentioned in the said section are satisfied (emphasis added) in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any



fact stated therein of which direct evidence would be admissible. The conditions precedent for proving an electronic record as a document have been laid down under Sub-section 2 of the Section 65B (2) to (4) read with Sub-Section 5 thereof.

35. From perusal of the records, in our opinion, the prosecution totally failed to prove anything before the trial court based on the contents available in the pen drive in the absence of the compliance of requirements to prove an electronic document under Section 65B of the Indian Evidence Act. An electronic record not proved in accordance with the requirement under Section 65B of the Evidence Act is admissible.

36. There is another crucial aspect which we have taken note of in the preceding paragraphs also, i.e. the medical evidence in the present case. The Doctor (PW-10), who had conducted the *postmortem* report clearly deposed, based on the *postmortem* examination, that time elapsed since death at the commencement of the *postmortem* examination was more than 72 years. In his cross-examination, he clarified that on the said basis it could be stated that the deceased had died before 3:20 am of 17.07.2018. In his cross-examination he also deposed that the death could not have occurred between 24 to 48 hours, before the *postmortem* examination. Anil Kumar Yadav (PW1)



and Tarun Yadav (PW-2) Moshmat Kasmoin Devi, grandmother of the deceased (PW-6) in their depositions have given the date of occurrence as 18.07.2018. Other witnesses have not indicated any specific date of occurrence. We have examined in that background the evidence of PW-1. According to him, he had seen the appellant dropping the dead body of the victim from his shoulder at about 9:00 pm on 18.07.2018. The appellant is said to have disclosed to PW-1 that it was the appellant's daughter whom he had killed. In his cross-examination, he deposed that he himself had gone to the officer-in-charge of the Police Station for recording his statement. He also deposed that he had not disclosed this fact to any person other than his wife. At the same breath, he deposed that he had heard on the loudspeaker in the evening at 7:00 pm that daughter of Gajendra Yadav (father of the victim) was missing. He further deposed that he had met Gajendra Yadav on 18.07.2018 before lodging of the FIR. The FIR was lodged on 19.07.2018. He further deposed in his cross-examination that Gajendra Yadav was not in his village on the date of occurrence and he had returned four days, thereafter Gajendra Yadav lodged had the FIR after his return. He further deposed that Gajendra Yadav had given his name as a witness in the case.



37. It is noted that Gajendra Yadav was not made a charge-sheet witness. Gajendra Yadav has not been examined at the trial. The evidence of PW-1 is self-contrary on the point of his meeting with Gajendra Yadav before, on or after the date of occurrence. Further, on the one hand he deposed that he had not disclosed any one about the occurrence which had taken place when he had gone to defecate and that he learnt only in the next evening that daughter of Gajendra Yadav was missing, on the other, in his cross- examination he deposed that he had disclosed this fact to PW-2 (Tarun Yadav) while returning back to his home in the night of 18.07.2018. Contrary to his own deposition in his examination-in-chief, he deposed in his cross-examination that he had heard on the loudspeaker on the date of occurrence that daughter of Gajendra Yadav was missing since 6:00 pm. Further, according to him, when he had disclosed this fact to PW-2 (Tarun Yadav), no one was knowing that daughter of Gajendra Yadav was missing. PW-2 in his deposition has not supported the version of PW-1 that he had disclosed to him about the occurrence which PW-1 had witnessed i.e. of the appellant throwing the dead body of a female child. He had claimed to be a witness to the conversation between the appellant and victim. On close reading of the deposition of PW-1 the same appears to be full



of inconsistencies and self contradictions and does not appear to be reliable. PW-2 in his evidence deposed, *interalia*, that on a search made by the family members of the victim, the dead body of the victim was found in the east of Maveshi Haat in bamboo orchard. He, thus, has not supported the prosecution's case that the discovery of the fact of the dead body lying at the place from where the same was recovered was based on the disclosure made by the appellant to the police in his confessional statement. Apart from PWs- 1 and 2, no witnesses have given exact date of occurrence i.e. the date since when the victim was missing. Other witnesses have referred merely to the months elapsed on the dates of their depositions since date of disappearance of the victim.

38. Evidence of PWs-3, 6 and 4 are crucial, they being the mother, grandmother of the deceased and barber to whom the victim was taken by PW-6 for haircutting; respectively. PW-3, the mother of the deceased deposed that for the first time the dead body of the deceased was recovered three days after she had gone for haircutting. She further deposed that upon inquiry from her mother-in-law she was told that the victim was in *Hatia*. While searching the victim she had gone to the appellant's shop and the appellant was present in his shop. PW-6 in her deposition has stated that she had



dropped the victim at the shop of Bandul Thakur (PW4) and had gone to purchase *chura* (flattened rice). When she returned to the shop of Bandul Thakur after purchasing *chura*, the victim was not present in the shop of Bundul Thakur. She searched for her for some time and thereafter returned back home. Bandul Thakur (PW-4) on the other hand deposed that the victim was brought by her grandmother (PW-6) for haircutting. He had given her haircut and thereafter the victim had gone back with her grandmother (PW-6). In the meanwhile, he got engaged in his shop and did not notice as to what had happened thereafter. Further, PW-6 deposed that when she learnt from her daughter-in-law (PW-3) that the victim had not returned, then she started searching and learnt from Tarun Yadav (PW-2) that the appellant had taken the victim along with him. Thereafter, she went to the shop of the appellant and found the gate of the shop closed. Thereafter, they went to the house of the appellant. Appellant's father told them that he (the appellant) had not come home. There are apparent contradictions between evidence of PW-3 and PW-6. PW-3 is said to have met the appellant at his tailoring shop. PW-6 deposed that the shop of the appellant was closed. She then described about what she had seen in the CCTV footage. She had categorically deposed in her statement that she had not



seen the shop of the appellant in the CCTV footage.

39. We are, thus, left with the only evidence of PW-2 (Tarun Yadav) in support of the prosecution's case to the effect that the victim had conversed with the appellant that he had seen the victim and the appellant conversing with the victim and inquiring about her grandmother and the appellant telling her that her grandmother was at his shop. The evidence of the witnesses PW-3 and PW-6 take us to nowhere.

40. In the Court's opinion, thus, there is serious contradictions both material and, otherwise, in the evidence of the prosecution's witnesses.

41. Further, it is significant that no attempt appears to have been taken to subject the appellant to examination by a medical expert. We consider at this juncture useful to refer to Section 53A of the Cr.P.C., which ordains that when a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner, as mentioned in the said provision. Section 53A of the Cr.P.C., read as under:

53-A. Examination of person accused of rape by medical practitioner.—(1) When a



person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:—

(i) the name and address of the accused and of the person by whom he was brought,



(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.]

42. It is true that the said provision is not mandatory in character, in the Court's opinion the said provision enables the prosecution to conduct examination of the victim in a manner as to substantially establish a charge of committing an offence of rape.

43. Mr. Ajay Kumar Thakur, learned counsel



representing the appellant has referred to various Supreme Court's decisions including the one rendered in case of ***Chotkau v. State of Uttar Pradesh*** (AIR 2022 SC 4688), Paragraphs 77 and 78 which are relevant and are again reproduced hereinbelow:-

77. It is true that a three member Bench of this Court indicated in Rajendra Pralhadrao Wasnik v. State of Maharashtra 9 that Section 53A is not mandatory. It was held in paragraphs 49 and 50 of the said decision as follows:
" 49. While Section 53-A CrPC. is not mandatory, it certainly requires a positive decision to be taken. There must be reasonable grounds for believing that the examination of a person will afford evidence as to the commission of an offence of rape or an attempt to commit rape. If reasonable grounds exist, then a medical examination as postulated by Section 53-A(2) CrPC must be conducted and that includes examination of the accused and description of material taken from the person of the accused for DNA profiling. Looked at from



another point of view,if there are reasonable grounds for believing that an examination of the accused will not afford evidence as to the commission of an offence as mentioned above, it is quite unlikely that a charge-sheet would even be filed against the accused for committing an offence of rape or attempt to rape.

50. Similarly, Section 164-A CrPC requires, wherever possible, for the medical examination of a victim of rape. Of course, the consent of the victim is necessary and the person conducting the examination must be competent to medically examine the victim. Again, one of the requirements of the medical examination is an examination of the victim and description of material taken from the person of the woman for DNA profiling."

78. After saying that Section 53A is not mandatory, this Court found in paragraph 54 of the aid decision that the failure of the prosecution to produce DNA evidence, warranted an adverse inference to be drawn. Paragraph 54 reads as follows:



" 54. For the prosecution to decline to produce DNA evidence would be a little unfortunate particularly when the facility of DNA profiling is available in the country. The prosecution would be well advised to take advantage of this, particularly in view of the provisions of Section 53-A and Section 164A CrPC. We are not going to the extent of suggesting that if there is no DNA profiling, the prosecution case cannot be proved but we are certainly of the view that where DNA profiling has not been done or it is held back from the trial court, an adverse consequence would follow for the prosecution."

44. The Supreme Court in case of **Chotkau** (supra) has further observed that failure of the prosecution to subject the appellant to medical examination was certainly fatal to the prosecution's case especially when the ocular evidence was found to be not trustworthy. After having observed as above the Supreme Court observed in paragraph 84 in case of **Chotkau** (supra):-

84. We cannot shy away from the fact that it is a ghastly case of rape and murder of a 6 years old child. By not



conducting the investigation properly, the prosecution has done injustice to the family of the victim. By fixing culpability upon the appellant without any shred of evidence which will stand the scrutiny, the prosecution has done injustice to the appellant. Court cannot make someone, a victim of injustice, to compensate for the injustice to the victim of a crime.

45. Decisions of various High Courts have been cited on behalf of the appellant to contend that Section 29 of the POCSO Act is not attracted because of the failure on the part of the prosecution to establish essential fundamental facts to attract its provisions.

46. After having discussed the entire evidence on record as noted above, in our opinion, the prosecution has failed to prove it conclusively that the recovery of the dead body of the deceased was based on confessional statement of the appellant in the police custody, there being overwhelming evidence on record to indicate that the dead body was searched by the family members of the deceased and it was found by them lying near paddy field of the



informant herself. Secondly, the prosecution failed to prove any electronic evidence in the nature of CCTV footage in accordance with the statutory requirement under Section 65B of the Indian Evidence Act. Thirdly, PW-1 who claims to be an eye-witness to the occurrence of the appellant carrying dead body of a child and throwing it on the ground in his presence appears to be wholly untrustworthy because of serious inconsistencies and self contradictions. It cannot be deduced based on the evidence on record that the appellant was seen cajoling, persuading or inducing the victim to accompany him. Last but not the least, is the medical evidence which suggests that the victim had died before 3:20 am of 17.01.2018. As the medical evidence does not support the prosecution's case, as set out at the trial and the ocular evidence is not trustworthy, in the Court's opinion benefit of doubt deserves to be extended to the accused i.e. the appellant.

47. This appeal is accordingly allowed.

48. The appellant stands acquitted of the charge punishable under Sections 364, 302/201, 376 of the IPC and Sections 4 and 6 of the POCSO Act. The appellant is in custody. Let him be released forthwith if not required in any



other case.

(Chakradhari Sharan Singh, J)

(I agree)

Rajesh Kumar Verma, J:

(Rajesh Kumar Verma, J)

anand/-

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